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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN
ORTEGA, A Minor, By And Through His
Guardian Ad Litem, ANA ROSA
ORTEGA,

Plaintiffs,

vs.

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, CHIEF WAYNE
TUCKER, In His Capacity As The Police

) Case No.:C-07-02659 JCS

) **UPDATED JOINT CASE**
) **MANAGEMENT CONFERENCE**
) **STATEMENT**

) DATE: March 14, 2008
) TIME: 1:30 p.m.
) COURTROOM: A, 15th Floor

Chief Of The City Of Oakland, RAMON J. ALCANTAR, Individually And In His Capacity As A Police Officer For The City Of Oakland, BERNARD ORTIZ, Individually And In His Capacity As A Police Officer For The City Of Oakland, and Does 1 through 200,

) The Honorable Magistrate Judge
) JOSEPH C. SPERO
)
)

Defendants.

The parties to the above-entitled action jointly submit this Updated Joint Case Management Statement and Proposed Order and request the Court adopt it as its Case Management Order in this case.

F. The parties which have not been served and the reason:

All parties have been served with the summons and complaint. Plaintiffs filed a Second Amended Complaint which added a new cause of action in violation of FRCP section 15(a) as leave of the court had not been given, there was no stipulation by the parties to add a new cause of action, and the answers to the First Amended Complaint had already been filed. Plaintiffs' counsel agreed to file a third amended complaint to correct the problem and agreed that the parties would not have to answer the Second Amended Complaint. However the Third Amended Complaint has yet to be filed.

G. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder.

Plaintiff: None.

Defendants: None.

I. ALTERNATIVE DISPUTE RESOLUTION

The parties agreed to mediate the case, and mediation was held on February 26, 2008. However, the parties were unable to settle the case in mediation. Officer Alcantar failed to appear for the mediation, and no offer of settlement was made by any defendant in response to plaintiffs' demands. The mediation proceeded as scheduled with the consent of all parties, counsel, and the mediator.

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III. DISCOVERY

Plaintiffs: Plaintiffs have deposed both Officers Alcantar and Ortiz, and have received defendants' responses to production of documents, including the officers' personnel files. Plaintiffs intend to depose the other police officers at the scene who indicated any memory of the events in their Internal Affairs interviews. Plaintiffs have obtained two sworn declarations from two of the witnesses previously disclosed to defendants in plaintiffs' Rule 26 Disclosures. Plaintiffs are attempting to obtain medical records and bills from their providers, and will produce the same to defendants when received. In addition, plaintiffs have recently discovered information regarding additional witnesses (though counsel for plaintiffs has had no contact with these witnesses) as follows

Cesar Rodriguez	(510) 478-0261
Abran Saragosa	(510) 695-7496
Jaime Fagardo	(510) 706-1536
Magdalena Herrera	(510) 706-1536
Javier Ortega	(510) 507-2053
Alejandra Ortega	(510) 507-2053
Claudia Ortega	(510) 280-4571

Plaintiffs have no further information regarding these witnesses at this time.

Defendants: In preparation for the mediation, Defendants propounded Interrogatories and Request for Production of Documents on both Plaintiffs. Defendants also deposed Plaintiffs Benjamin Ortega and Miguel Ortega.

There are significant discovery issues that need to be addressed by the court. The above list of "witnesses" has not previously been disclosed by plaintiffs. In fact defendants only learned of these witnesses upon receiving plaintiffs' additions to this Case Management Conference Statement. There has not been a supplemental Rule 26 disclosure made by plaintiffs in clear violation of the Federal Rules of Civil Procedure. Defendants have been severely prejudiced by plaintiffs' clear withholding of

1 information. Defendants prepared for mediation, including the depositions of plaintiffs,
2 believing that all of plaintiffs' witnesses had been disclosed. Defendants have now
3 learned there are new witnesses that defendants were unable to question plaintiffs
4 about. Plaintiffs have caused defendants to waste significant time and resources
5 preparing for mediation by deliberately waiting until after plaintiffs were deposed (and
6 after the mediation) to disclose this list of additional witnesses.

7 In addition, plaintiffs have refused to produce medical records, including medical
8 bills, of the plaintiffs, arguing they are not in possession of them and have no duty to
9 obtain them. Plaintiffs have taken this position even though plaintiffs testified that they
10 received bills for medical and psychiatric services. Plaintiffs have refused to even
11 disclose the names of Benjamin Ortega's treating physician(s) and mental health
12 professional(s). Accordingly, defendants have been foreclosed from even initiating an
13 attempt to subpoena such records.

14 During the deposition of Plaintiff Benjamin Ortega testified about pictures of his
15 injuries that were taken the day of the incident, pictures that had not been produced in
16 previous discovery requests. Plaintiffs subsequently produced the pictures.

17 Defendants have also recently been made aware that counsel for plaintiffs has
18 obtained declarations from witnesses without being informed as to the identity of those
19 declarants and whether those declarants were included in Plaintiffs' Initial Disclosures.
20 Plaintiffs only disclosed the existence of such "declarations" during the third hour of
21 mediation, in contravention of defendants' belief that mediation negotiations were
22 occurring with candor and in good faith.

23 Defendants therefore request that the Court order plaintiffs to do the following
24 within ten (10) days of the Case Management Conference.

25 1) Identify all witnesses, including a brief summary of what they would testify to,
26 including adequate contact information (addresses, telephone number, etc.). Indicate
27 whether plaintiffs will produce them for deposition without a subpoena. Failure to
28 disclose their identity would result in preclusion of the witness's testimony at trial.

1 2) Produce copies of the declarations of witnesses obtained by plaintiffs'
2 counsel.

3 3) Produce copies of all of plaintiffs' medical records and psychiatric records
4 stemming from this incident. Failure to disclose the records would result in their
5 preclusion at trial.

6 4) Signed releases from plaintiffs' for all of their psychiatric and medical records
7 stemming from this incident, including plaintiffs' social security numbers, medical record
8 numbers, and dates of birth.

9 5) A list of all medical and psychiatric treatment providers stemming from this
10 incident.

11 It is imperative that the Court order plaintiffs to produce the above items. Non-
12 expert discovery in this case closes on July 1, 2008. If plaintiffs continue to fail to
13 disclose items they have a duty to disclose, not only will defendants continue to be
14 unable to properly evaluate this case, but defendants will not have enough time to
15 conduct necessary discovery and bring appropriate discovery motions.

16 Defendants also ask the Court to consider monetary sanctions against plaintiffs
17 for their blatant and willful circumvention of the discovery rules under Federal Rule of
18 Civil Procedure section 26(g). The Court is empowered to issue sanctions on its own
19 initiative. (F.R.C.P. Rule 26(g)(3).) Defendants spent several weeks conducting
20 discovery, including depositions, in preparation for the Court-ordered mediation, only to
21 learn that the time was essentially wasted by plaintiffs' willful failure to timely disclose
22 information they had a duty to disclose under the Federal Rules of Civil Procedure. If
23 the Court is unwilling to order sanctions at this time, defendants request that the Court
24 issue an Order to Show Cause why sanctions should not be imposed.

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